

CCRB INVESTIGATIVE RECOMMENDATION

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|---|---|---------------------------|---|---|--|
| Investigator: Patrick Yu | Team: Squad #3 | CCRB Case #: 201801128 | <input checked="" type="checkbox"/> Force | <input checked="" type="checkbox"/> Discourt. | <input type="checkbox"/> U.S. |
| | | | <input checked="" type="checkbox"/> Abuse | <input type="checkbox"/> O.L. | <input checked="" type="checkbox"/> Injury |
| Incident Date(s) Saturday, 02/03/2018 10:00 PM | Location of Incident: In front of § 87(2)(b) § 87(2)(b) 6th Precinct stationhouse; en route to the 6th Pr | | Precinct: 06 | 18 Mo. SOL 8/3/2019 | EO SOL 8/3/2019 |
| Date/Time CV Reported Sat, 02/03/2018 11:00 PM | CV Reported At: IAB | How CV Reported: Phone | Date/Time Received at CCRB Fri, 02/09/2018 1:36 PM | | |

| Complainant/Victim | Type | Home Address |
|--------------------|------|--------------|
| | | |
| | | |
| | | |

| Subject Officer(s) | Shield | TaxID | Command |
|---------------------------|--------|--------|---------|
| 1. POM Cory Green | 01392 | 950531 | 006 PCT |
| 2. SGT John Becerra | 4741 | 932311 | 006 PCT |
| 3. POM Brian Benvenuto | 23866 | 952459 | 006 PCT |
| 4. POM Nicholas Castiello | 22523 | 952555 | 006 PCT |
| 5. Officers | | | |
| 6. An officer | | | |
| 7. POM James Shouldis | 16502 | 958068 | 006 PCT |
| 8. POF Nercy Burgos | 26131 | 948717 | 006 PCT |

| Witness Officer(s) | Shield No | Tax No | Cmd Name |
|------------------------|-----------|--------|----------|
| 1. POM Thomas Grace | 01436 | 933817 | 006 PCT |
| 2. POM Robert Janison | 11873 | 956772 | 006 PCT |
| 3. DTS Robert Jackson | 4003 | 906502 | 006 PCT |
| 4. POM Patrick Defonzo | 09791 | 957523 | 006 PCT |
| 5. POF Meredith Biggin | 10250 | 950081 | 006 PCT |
| 6. POM Thomas Cronin | 08657 | 963472 | 006 PCT |
| 7. POM Michael Gambina | 05499 | 963528 | 006 PCT |
| 8. DTS Wesley Mak | 4340 | 930631 | 006 PCT |

| Officer(s) | Allegation | Investigator Recommendation |
|--------------------|---|-----------------------------|
| A.POM Cory Green | Abuse: On February 3, 2018, at § 87(2)(b) in Manhattan, Police Officer Cory Green stopped § 87(2)(b) | |
| B.POM Cory Green | Abuse: On February 3, 2018, at § 87(2)(b) in Manhattan, Police Officer Cory Green searched § 87(2)(b) | |
| C.SGT John Becerra | Abuse: On February 3, 2018, at § 87(2)(b) in Manhattan, Sergeant John Becerra frisked § 87(2)(b) | |

| Officer(s) | Allegation | Investigator Recommendation |
|--------------------------|--|-----------------------------|
| D.SGT John Becerra | Abuse: On February 3, 2018, at § 87(2)(b) in Manhattan, Sergeant John Becerra searched the vehicle in which § 87(2)(b) was an occupant. | |
| E.SGT John Becerra | Force: On February 3, 2018, at § 87(2)(b) in Manhattan, Sergeant John Becerra tasered § 87(2)(b) | |
| F.POM Nicholas Castiello | Force: On February 3, 2018, at § 87(2)(b) in Manhattan, Police Officer Nicholas Castiello used physical force against § 87(2)(b) | |
| G.POM Brian Benvenuto | Force: On February 3, 2018, at § 87(2)(b) in Manhattan, Police Officer Brian Benvenuto used physical force against § 87(2)(b) | |
| H.SGT John Becerra | Force: On February 3, 2018, at § 87(2)(b) in Manhattan, Sergeant John Becerra tasered § 87(2)(b) | |
| I. An officer | Force: On February 3, 2018, at § 87(2)(b) in Manhattan, an officer used physical force against § 87(2)(b) | |
| J. An officer | Force: On February 3, 2018, at § 87(2)(b) in Manhattan, an officer restricted § 87(2)(b)'s breathing. | |
| K.SGT John Becerra | Force: On February 3, 2018, at § 87(2)(b) in Manhattan, Sergeant John Becerra used physical force against § 87(2)(b) | |
| L. An officer | Discourtesy: On February 3, 2018, at § 87(2)(b) in Manhattan, an officer spoke discourteously to § 87(2)(b) | |
| M. An officer | Abuse: On February 3, 2018, at § 87(2)(b) in Manhattan, an officer threatened § 87(2)(b) with the use of force. | |
| N.POM Brian Benvenuto | Force: On February 3, 2018, at § 87(2)(b) Police Officer Brian Benvenuto used physical force against § 87(2)(b) | |
| O.POM Brian Benvenuto | Discourtesy: On February 3, 2018, at § 87(2)(b) Police Officer Brian Benvenuto spoke discourteously to § 87(2)(b) | |
| P.POM Brian Benvenuto | Abuse: On February 3, 2018, at § 87(2)(b) Police Officer Brian Benvenuto threatened to seize § 87(2)(b)'s property. | |
| Q.POM Brian Benvenuto | Discourtesy: On February 4, 2018, at the 6th Precinct stationhouse, Police Officer Brian Benvenuto spoke discourteously to § 87(2)(b) | |
| R.POF Nercy Burgos | Abuse: On February 4, 2018, en route to the 6th Precinct stationhouse, Police Officer Nercy Burgos did not obtain medical treatment for § 87(2)(b) | |
| S.POM James Shouldis | Abuse: On February 4, 2018, en route to the 6th Precinct stationhouse, Police Officer James Shouldis did not obtain medical treatment for § 87(2)(b) | |
| T. Officers | Abuse: On February 4, 2018, at the 6th Precinct stationhouse, officers did not obtain medical treatment for § 87(2)(b) | |

Case Summary

On February 3, 2018, Sgt. John Becerra reported that § 87(2)(b) sustained injuries while in police custody, generating IAB log #18-04736. The CCRB received this case on February 9, 2018. This case was reassigned to SI Patrick Yu on January 9, 2019.

On February 3, 2018, at approximately 10:00 p.m., Sgt. John Becerra and PO Cory Green of the 6th Precinct, approached § 87(2)(b)'s vehicle while it was parked at a hydrant in front of § 87(2)(b) in Manhattan. PO Green asked the passenger, § 87(2)(b) to step out of the vehicle and searched him (**Allegation A: Abuse of Authority**, § 87(2)(g); **Allegation B: Abuse of Authority**, § 87(2)(g)). Sgt. Becerra asked § 87(2)(b) to step out of the vehicle and frisked § 87(2)(b) (**Allegation C: Abuse of Authority**, § 87(2)(g)). Sgt. Becerra subsequently searched § 87(2)(b)'s vehicle (**Allegation D: Abuse of Authority**, § 87(2)(g)). While § 87(2)(b) and § 87(2)(b) were out of the vehicle, an uninvolved civilian, § 87(2)(b) walked onto the scene and allegedly bumped into the officers. At this point, PO Brian Benvenuto and PO Nicholas Castiello of the 6th Precinct were also on the scene. Sgt. Becerra tasered § 87(2)(b) (**Allegation E: Force**, § 87(2)(g)). PO Benvenuto and PO Castiello allegedly used force to take § 87(2)(b) down to the ground (**Allegation F: Force**, § 87(2)(g); **Allegation G: Force**, § 87(2)(g)). After § 87(2)(b) was on the ground, Sgt. Becerra tasered § 87(2)(b) again (**Allegation H: Force**, § 87(2)(g)). An officer then placed their knee against the back of § 87(2)(b)'s head and knee, kicked § 87(2)(b) and restricted his breathing. (**Allegation I: Force**, § 87(2)(g); **Allegation J: Force**, § 87(2)(g)). While on the ground, Sgt. Becerra kicked § 87(2)(b) (**Allegation K: Force**, § 87(2)(g)). An officer used profanities towards § 87(2)(b) and threatened to punch him (**Allegation L: Discourtesy**, § 87(2)(g); **Allegation M: Abuse of Authority**, § 87(2)(g)). An unidentified officer drew his taser and asked § 87(2)(b) "How does that Taser feel, motherfucker" (**subsumed within Allegation L and Allegation M**). § 87(2)(b) was placed in handcuffs and then transported to § 87(2)(b). § 87(2)(b) was arrested as a result of this incident.

At § 87(2)(b) PO Benvenuto allegedly pushed § 87(2)(b) and cursed at him (**Allegation N: Force**, § 87(2)(g); **Allegation O: Discourtesy**, § 87(2)(g)). PO Benvenuto also threatened to seize § 87(2)(b)'s property (**Allegation P: Abuse of Authority**, § 87(2)(g)). § 87(2)(b) was discharged from the hospital on February 4, 2018 and was transported to the 6th Precinct stationhouse.

On February 4, 2018, while inside the 6th Precinct stationhouse, PO Benvenuto allegedly told § 87(2)(b) "Fuck out of here," (**Allegation Q: Discourtesy**, § 87(2)(g)). From the stationhouse, PO Nercy Burgos and PO James Shouldis transported § 87(2)(b) to Manhattan Central Booking. PO Burgos and PO Shouldis subsequently transported § 87(2)(b) back to the 6th Precinct stationhouse. While en route to the stationhouse, § 87(2)(b) requested to go to the hospital and in response PO Burgos and PO Shouldis refused to provide him with medical attention (**Allegation R: Abuse of Authority**, § 87(2)(g); **Allegation S: Abuse of Authority**, § 87(2)(g)). At the 6th Precinct stationhouse, § 87(2)(b) requested to go to the hospital and unidentified officers refused to provide him with medical attention (**Allegation T: Abuse of Authority**, § 87(2)(g)).

There is no video footage pertaining to this incident.

Findings and Recommendations

Allegation (A) Abuse of Authority: On February 3, 2018, at § 87(2)(b) in Manhattan, Police Officer Cory Green stopped § 87(2)(b)

Allegation (B) Abuse of Authority: On February 3, 2018, at § 87(2)(b) in Manhattan, Police Officer Cory Green searched § 87(2)(b)

In his phone statement, § 87(2)(b) stated that he met § 87(2)(b) to show him a car he was selling and after he was done showing the car, § 87(2)(b) followed § 87(2)(b) inside § 87(2)(b)'s vehicle to continue their conversation (Board Review 12 and 13). § 87(2)(b)'s vehicle was parked at a fire hydrant in front of § 87(2)(b)'s residence. After approximately five minutes, PO Green and Sgt. Becerra approached § 87(2)(b)'s vehicle and PO Green asked § 87(2)(b) to step out of the vehicle. § 87(2)(b) complied. Sgt. Becerra asked § 87(2)(b) to step out of the vehicle and he refused. Outside of the vehicle, PO Green searched § 87(2)(b)'s pants and jacket. PO Green asked § 87(2)(b) if he knew § 87(2)(b) and told him that § 87(2)(b) had been arrested over 20 times and was in a gang. § 87(2)(b) refused to provide a sworn statement to the CCRB.

The investigation was unable to reach § 87(2)(b) for his statement.

In his initial CCRB interview, PO Green stated that he and Sgt. Becerra asked the civilians to step out of the vehicle (Board review 04). In a second interview on February 27, 2019, PO Green stated that § 87(2)(b) was free to leave during the incident and that § 87(2)(b) exited the vehicle on his own volition (Board Review 11). PO Green did not recall if § 87(2)(b) was ever told to step out. § 87(2)(b) did not make any threatening statements or movements toward PO Green and PO Green did not recall seeing any bulges on § 87(2)(b). PO Green did not recall if he searched § 87(2)(b). § 87(2)(b) initially refused to exit the vehicle, but he eventually did so after Sgt. Becerra asked him multiple times.

In his second CCRB testimony, Sgt. Becerra stated that he did not see PO Green frisk or search § 87(2)(b) (Board Review 10).

A Stop report was not prepared for § 87(2)(b) for this incident (Board Review 15).

§ 87(2)(g)
§ 87(2)(g)
§ 87(2)(g)
§ 87(2)(g)

Allegation (C) Abuse of Authority: On February 3, 2018, at § 87(2)(b) in Manhattan, Sergeant John Becerra frisked § 87(2)(b)

As noted above, § 87(2)(b)'s vehicle was parked at a fire hydrant when PO Green and Sgt. Becerra approached his vehicle. After § 87(2)(b) stepped out of the vehicle, Sgt. Becerra asked § 87(2)(b) to step out of the vehicle and § 87(2)(b) refused (Board Review 03,

11, and 12). It is undisputed that a baseball bat and a large bolt cutter were inside § 87(2)(b)'s vehicle.

In his phone statement, § 87(2)(b) stated that the officers asked § 87(2)(b) why he had a bat and a “cutter” and § 87(2)(b) told them that his children play baseball and the “cutter” was used to cut locks.

The investigation was unable to reach § 87(2)(b) for his statement.

§ 87(2)(g)

§ 87(2)(b) In their second CCRB interview, Sgt. Becerra and PO Green stated that they were doing pre-tour overtime to address a robbery condition in the 6th Precinct on February 3, 2018 (Board Review 10 and 11). There had been two robberies that occurred in the vicinity of § 87(2)(b) within a week to two months prior to the date of incident. PO Green stated that the robberies involved firearms. PO Green did not recall exactly where or what time the robberies occurred, but Sgt. Becerra stated that the robberies occurred at around the time of the incident. Sgt. Becerra stated that there were two black males involved in one of the robberies and three black males involved in the other robbery. PO Green and Sgt. Becerra believed that the suspects of the robberies may have used a vehicle. Sgt. Becerra stated that when a vehicle is involved in a robbery it would often wait in a bus stop or hydrant. As they observed § 87(2)(b)'s vehicle for approximately less than five minutes, Sgt. Becerra ran the vehicle's license plate and determined that § 87(2)(b) was the owner of the vehicle; the search also yielded a photo of § 87(2)(b). PO Green stated that from the search, he recalled § 87(2)(b) being a gang member and had prior arrests, including one for robbery. Sgt. Becerra stated that out of the 20-30 previous arrests, § 87(2)(b) had prior arrests involving robberies and burglaries. Sgt. Becerra did not believe § 87(2)(b) had an outstanding I-CARD or warrant at the time. After observing the vehicle for a few minutes, Sgt. Becerra and PO Green decided to approach the vehicle given that it was parked at a fire hydrant and to find out what was going on.

Upon approaching the vehicle, Sgt. Becerra and PO Green observed two occupants inside the vehicle and a baseball bat and a large bolt cutter behind the driver seat. Sgt. Becerra and PO Green stated that the two items were easily accessible to § 87(2)(b). They both stated that being in possession of the items were legal. However, Sgt. Becerra stated that a bolt cutter could be used to clip locks and could be used as a burglar tool or a weapon and the bat could be used as a weapon. At the vehicle, Sgt. Becerra and PO Green recognized § 87(2)(b) as the person from the photo from the license plate search.

In his second CCRB interview, Sgt. Becerra stated that upon approaching the vehicle, he asked § 87(2)(b) what was going on and he gave vague answers and stated that he was not doing anything wrong (Board Review 10). Sgt. Becerra asked § 87(2)(b) what he was doing there and who the passenger was. In response, § 87(2)(b) said he did not have to answer him, that he was not doing anything wrong, and that he was bothering him. Sgt. Becerra asked if § 87(2)(b) had been arrested before and he denied being arrested. § 87(2)(b) was very animated and appeared to be agitated. At some point, Sgt. Becerra asked why § 87(2)(b) had the objects in the backseat and § 87(2)(b) did not provide a “clear answer,” but § 87(2)(b) turned around to look which made Sgt. Becerra concerned about whether § 87(2)(b)

§ 87(2)(b) was going to use the objects or if there was something else in the back. Sgt. Becerra did not see § 87(2)(b) reach for the items. Sgt. Becerra asked § 87(2)(b) to exit the vehicle for his own safety to ensure that there were no additional weapons in the vehicle. Sgt. Becerra was concerned because it appeared as if they were waiting for someone, the robbery condition, § 87(2)(b) was not being truthful, and because of his observation of the weapons and tools that are used in burglaries that were in the back seat. Sgt. Becerra stated that § 87(2)(b) fit the description of the perpetrators of the robberies because the suspect was a black or Hispanic male and the robberies occurred around the time frame of this incident. Sgt. Becerra asked § 87(2)(b) to step out at least 3-5 times and § 87(2)(b) eventually complied. § 87(2)(b) was repeatedly saying that he was not doing anything and that the officers were bothering him. Once § 87(2)(b) was out of the vehicle, Sgt. Becerra frisked § 87(2)(b)'s waistband and his back along the waist to make sure he did not have any weapons. Sgt. Becerra believed § 87(2)(b) might have had a weapon because he did not comply with stepping out of the vehicle, gave vague answers, and his observation of the objects in the backseat. § 87(2)(b) was suspected of the being involved robberies at this point, but he was not suspected of any additional crimes. Sgt. Becerra did not recall if he saw a bulge on § 87(2)(b). The frisk yielded negative results for a weapon. § 87(2)(b) was not considered to be under arrest.

In his second CCRB interview, PO Green also stated that § 87(2)(b) refused to exit the vehicle and was moving from side to side (Board Review 11). PO Green did not know what occurred after § 87(2)(b) eventually exited the vehicle. PO Green did not recall if Sgt. Becerra said anything else to § 87(2)(b) aside from asking him to step out. PO Green was primarily focused on § 87(2)(b) at this point.

At the end of the incident, § 87(2)(b) was issued a parking summons for parking at a hydrant (Board Review 36).

A Stop report was not prepared regarding this incident (Board Review 15).

The Booking and Arraignment Disposition System (BADs) showed that § 87(2)(b) had prior arrests, some of which have been sealed, but none were for robberies or burglaries (Board Review 24). Most recently, § 87(2)(b) had been arrested for criminal possession of a weapon on October 2017 (Board Review 23). According to that arrest report, § 87(2)(b) was a known member of a gang and a black gravity knife was found in his vehicle.

§ 87(2)(b), § 87(2)(a) 160.50

§ 87(2)(g)

§ 87(2)(g)

Officers' knowledge of an individual's past specific criminal record and presence in an area with that specific crime pattern does not provide a basis for reasonable suspicion, People v. Johnson, 64 N.Y.2d 617 (1984) (Board Review 39).

An officer may stop, detain, and question an individual if he or she has reasonable suspicion that the individual has committed, is committing, or is about to commit a crime, People v. DeBour, 40 N.Y.2d 210 (1976) (Board Review 44). An officer must have a reasonable suspicion that a person is armed in order to frisk that person (Id.).

§ 87(2)(g)

Allegation (D) Abuse of Authority: On February 3, 2018, at § 87(2)(b) in Manhattan, Sergeant John Becerra searched the vehicle in which § 87(2)(b) was an occupant.

In his phone statement, § 87(2)(b) stated that after he and § 87(2)(b) was out of the vehicle, officers searched § 87(2)(b)'s vehicle and removed a bag and a large bolt cutter (Board Review 12 and 13).

In his second CCRB statement, Sgt. Becerra stated that after he frisked § 87(2)(b) and did not find a weapon, he searched § 87(2)(b)'s vehicle to ensure that there were no weapons in the front passenger area, the driver seat, and the floor of the backseat (Board review 10). Sgt. Becerra did not recall if he searched anywhere else. The search yielded negative results for any weapons. Aside from the reasons noted above, Sgt. Becerra said that there were no additional reasons as to why he believed there were weapons inside the vehicle. Sgt. Becerra did not recall if there was a black bag inside the vehicle and denied removing any items from the vehicle.

In his second CCRB statement, PO Green did not recall if Sgt. Becerra searched § 87(2)(b)'s vehicle and did not see Sgt. Becerra remove the bat or bolt cutter from the vehicle (Board Review 11).

Only with an articulable basis of a fear of personal harm may an officer intrude upon a suspect's personal effects, People v. Mundo, 99 N.Y.2d 55 (2002) (Board Review 38). Absent probable cause, it is unlawful for a police officer to invade the interior of a stopped vehicle once the suspects have been removed and patted down without incident, as any immediate threat to the officers' safety has consequently been eliminated (Id.).

§ 87(2)(g)
[REDACTED]

Allegation (E) Force: On February 3, 2018, at § 87(2)(b) in Manhattan, Sergeant John Becerra tasered § 87(2)(b)

Allegation (F) Force: On February 3, 2018, at § 87(2)(b) in Manhattan, Police Officer Nicholas Castiello used physical force against § 87(2)(b)

Allegation (G) Force: On February 3, 2018, at § 87(2)(b) in Manhattan, Police Officer Brian Benvenuto used physical force against § 87(2)(b)

Allegation (H) Force: On February 3, 2018, at § 87(2)(b) in Manhattan, Sergeant John Becerra tasered § 87(2)(b)

It is undisputed that Sgt. Becerra tasered § 87(2)(b) twice and that PO Benvenuto and PO Castiello used some level force against § 87(2)(b).

In his CCRB complaint, § 87(2)(b) denied drinking alcohol prior to the incident (Board Review 01). § 87(2)(b) is 6'3" tall and weighs 230 pounds. As § 87(2)(b) was crossing to the other side of Morton Street, § 87(2)(b) heard "noises" and people speaking. § 87(2)(b) continued to walk towards the sidewalk and put his arms up. When § 87(2)(b) turned to his left, he saw Sgt. Becerra point a taser at him and then tasered him. Sgt. Becerra was approximately 10 feet away. § 87(2)(b) began to shake and his body became stiff. § 87(2)(b) moved forward, but he denied falling to the ground. Several officers approached § 87(2)(b) and grabbed his arm, the back of his neck, and his feet. § 87(2)(b) tried to loosen his body, but § 87(2)(b) later stated that he did not move after being tasered. PO Benvenuto and PO Castiello picked § 87(2)(b) up by his legs, lifted him up and then dropped him on the ground. § 87(2)(b)'s chest hit the ground and was tasered again. § 87(2)(b) stated that he could not move because the officers were on top of him. § 87(2)(b) denied kicking his legs. § 87(2)(b) felt the effects of the taser constantly with short intervals for about two minutes. § 87(2)(b) felt the taser even after he was handcuffed, and estimated that he was tasered for a minute while he was handcuffed and shackled.

In a phone statement, § 87(2)(b) stated that § 87(2)(b) stopped and looked at them while § 87(2)(b) and § 87(2)(b) were standing with the officers (Board Review 12 and 13). § 87(2)(b) stated that § 87(2)(b) told the officers that he could look at whatever he wanted. § 87(2)(b) believed that § 87(2)(b) may not have been sober during the incident, but he was not sure. § 87(2)(b) saw officers hold § 87(2)(b)'s arms and told him to stand against the wall, but § 87(2)(b) did not comply. The officers had difficulty controlling § 87(2)(b) but § 87(2)(b) did not clarify what § 87(2)(b) was doing. § 87(2)(b) saw Sgt. Becerra taser § 87(2)(b) and § 87(2)(b) believed that the taser was ineffective; § 87(2)(b) became aggravated. § 87(2)(b) stated that another officer tasered § 87(2)(b) and the prongs landed in a different area on his body. § 87(2)(b) did not say how far Sgt. Becerra was from § 87(2)(b) when Sgt. Becerra tasered him. § 87(2)(b) stated that § 87(2)(b) fell to the ground and the officers had difficulties handcuffing § 87(2)(b) on the ground.

§ 87(2)(g)

In their CCRB statements, Sgt. Becerra, PO Green, PO Benvenuto, and PO Castiello stated that they noticed § 87(2)(b) as he crossed the street and approached the scene of the car stop (Board Review 02-05). In their initial CCRB interviews, Sgt. Becerra and PO Green both stated that § 87(2)(b) bumped PO Green and continued to walk (Board Review 03 and 04). PO Green and PO Benvenuto believed that § 87(2)(b) may have been drunk or on drugs because he had blood-shot eyes. PO Benvenuto added that he smelled alcohol from § 87(2)(b)'s breath. Sgt. Becerra, PO Green, and PO Benvenuto stated that § 87(2)(b) bumped or brushed PO Benvenuto. Sgt. Becerra and PO Benvenuto stated that in response, PO Benvenuto identified himself as an officer and used his arm to guide § 87(2)(b) away. Sgt. Becerra and PO Green both stated that § 87(2)(b) said something to the effect of “These are my streets” or, “The streets are mine.”

In his initial CCRB statement, Sgt. Becerra stated that he instructed § 87(2)(b) to leave after he bumped PO Benvenuto and § 87(2)(b) subsequently ran towards Sgt. Becerra with his fist clenched as if he was going to punch Sgt. Becerra (Board Review 03). Sgt. Becerra perceived § 87(2)(b) as a threat due to his clenched fist, his size, and his build; Sgt. Becerra is 5'9" tall and weighs 220 pounds. Sgt. Becerra believed that § 87(2)(b) was going to strike him, so in response, Sgt. Becerra deployed his taser, with the prongs making contact with § 87(2)(b)'s left arm. Sgt. Becerra believed that he warned § 87(2)(b) that he was about to taser him. Sgt. Becerra believed that the momentum of § 87(2)(b) running at him combined with the taser caused § 87(2)(b) to fall to the ground, but he later stated that § 87(2)(b) fell to the ground on his own and due to PO Castiello taking him to the ground. § 87(2)(b) sustained an abrasion to his head as a result. Sgt. Becerra stated that it appeared that § 87(2)(b)'s head struck the sidewalk. Sgt. Becerra stated that while § 87(2)(b) was on the ground, § 87(2)(b) resisted, wrestled, and tried to get up by pushing his body up. § 87(2)(b) moved his head around, screamed, and kicked his legs towards Sgt. Becerra. Sgt. Becerra did not know whether either of § 87(2)(b)'s hands were in handcuffs. Sgt. Becerra told § 87(2)(b) to stop resisting or he would use his taser again. When § 87(2)(b) did not comply, Sgt. Becerra deployed a second cycle of the taser in cartridge mode. PO Castiello and PO Benvenuto were still trying to put § 87(2)(b)

§ 87(2)(b)'s hands behind his back. Sgt. Becerra stated that the second cycle was "slightly" effective, and § 87(2)(b) stopped trying to get up from the ground. Eventually, after about a minute, Sgt. Becerra, PO Castiello, and PO Benevento overpowered § 87(2)(b) got his hands behind his back, and handcuffed him.

In his initial CCRB statement, PO Green also stated that he observed § 87(2)(b) raise his fist and lunge at Sgt. Becerra (Board Review 04). PO Green stated that Sgt. Becerra subsequently tasered § 87(2)(b) and he fell to the ground. PO Green denied seeing anyone bring § 87(2)(b) to the ground and denied seeing an officer forcibly take § 87(2)(b) to the ground or push him to the ground. At this point, PO Green was primarily focused on § 87(2)(b) and § 87(2)(b) to make sure that they did not get involved. PO Green did not see § 87(2)(b) put up any resistance while he was on the ground, but PO Green overheard PO Benvenuto and PO Castiello telling him to provide his hands and stop resisting, and he heard § 87(2)(b) yelling and shouting,

In his CCRB statement, PO Castiello stated that § 87(2)(b) stood in the middle of the street and stared at the officers and when they told § 87(2)(b) to go on the sidewalk and § 87(2)(b) responded, "I'm not getting on the fucking sidewalk" (Board Review 02). § 87(2)(b) subsequently walked towards Sgt. Becerra with his hands clenched. Sgt. Becerra pulled out his taser and told § 87(2)(b) to get back multiple times and that he was going to taser § 87(2)(b). PO Castiello and PO Benvenuto went to approach § 87(2)(b) to grab him, but § 87(2)(b) pushed PO Benvenuto. § 87(2)(b) continued walking towards Sgt. Becerra. PO Castiello grabbed § 87(2)(b)'s right arm while PO Benvenuto stood on § 87(2)(b)'s left side. Simultaneously to them grabbing § 87(2)(b) Sgt. Becerra tasered § 87(2)(b) and § 87(2)(b). PO Castiello and PO Benvenuto went to the ground. PO Castiello tried to get § 87(2)(b)'s hand behind his back, but § 87(2)(b) tightened up and flailed his arms. PO Castiello told § 87(2)(b) to place his hands behind his back several times. Aside from pulling § 87(2)(b)'s arms, PO Castiello did not do anything else. PO Benvenuto was also trying to get § 87(2)(b)'s arms. PO Castiello did not know how many times § 87(2)(b) was tasered. § 87(2)(b) was handcuffed after approximately 30 seconds or a minute.

In his CCRB statement, PO Benvenuto stated that after he identified himself as an officer to § 87(2)(b) § 87(2)(b) went towards PO Benvenuto and said, "Don't fucking tell me what to do." (Board Review 05). § 87(2)(b) became irate, raised his fist, and then swung towards PO Benvenuto's face. PO Benvenuto took a step back and dodged the punch. Sgt. Becerra drew his taser, pointed it at § 87(2)(b) and said something to the effect of, "Police!" or, "Step back or I'm going to tase you." § 87(2)(b) subsequently charged at Sgt. Becerra with his hands in front of his body and came within two or three feet of Sgt. Becerra before Sgt. Becerra deployed the taser at § 87(2)(b). PO Benvenuto assumed that the taser was effective because § 87(2)(b) began to fall forward and went to one knee. PO Castiello and PO Benvenuto each grabbed one of § 87(2)(b)'s arms and attempted to guide § 87(2)(b) to the ground, but § 87(2)(b) fell to the ground and hit his head against the ground. PO Castiello and PO Benvenuto quickly pulled § 87(2)(b)'s arms behind his back and handcuffed him. PO Benvenuto stated that § 87(2)(b) was screaming, but he did not know what § 87(2)(b) said. PO Benvenuto stated that § 87(2)(b) was not moving or fighting as they were handcuffing him. PO Benvenuto was unaware if Sgt. Becerra fired the taser a second time.

The X-26 data sheet indicated that Sgt. Becerra's taser was initially triggered for five seconds and then a second time, seven seconds later, for four seconds (Board Review 14).

Sgt. Becerra prepared TRI #§ 87(2)(b), documenting a foot strike, forcible take down, and use of a taser (Board Review 31). It was also noted that § 87(2)(b) fell to the ground, continued to resist, and was incapacitated after the taser was used. PO Benvenuto and PO Castiello prepared TRI reports, #§ 87(2)(b) and #§ 87(2)(b) (respectively), documenting a forcible take down (Board Review 26 and 28). Sgt. Becerra's testimony in the ISAR, prepared by Captain Robert O'Hare, was consistent with Sgt. Becerra's CCRB statement (Board Review 30).

PO Green's testimony in the Criminal Court complaint and on § 87(2)(b)'s arrest report were generally consistent with officers' CCRB testimony (Board Review 33 and 35).

According to § 87(2)(b)'s medical records from § 87(2)(b) § 87(2)(b) told medical personnel that he drank alcohol on the night of the incident (Privileged). Medical Personnel also noted that § 87(2)(b) appeared to be intoxicated. § 87(2)(b) was diagnosed with head injuries, a forehead abrasion, a forehead contusion, and a laceration to the front of his face.

§ 87(2)(g)
[REDACTED]

NYPD Patrol Guide Procedure 221-01 states that force may be used when it is reasonable to ensure the safety of a member of the service or otherwise protect life, or when it is reasonable to place person in custody or prevent escape from custody (Board Review 43).

NYPD Patrol Guide Procedure 221-08 states that officers may use conducted electrical weapon (CEW) against persons who are actively resisting, exhibiting active aggression, or to prevent individuals from physically injuring themselves and others (Board Review 46). Active resisting includes physically evasive movements, such as bracing, tensing, pushing, or verbally signaling intention to avoid being taken into custody.

§ 87(2)(g)
[REDACTED]

§ 87(2)(g)

§ 87(2)(g)

Allegation (I) Force: On February 3, 2018, at § 87(2)(b) in Manhattan, an officer used physical force against § 87(2)(b)

Allegation (J) Force: On February 3, 2018, at § 87(2)(b) in Manhattan, an officer restricted § 87(2)(b)'s breathing.

Allegation (L) Discourtesy: On February 3, 2018, at § 87(2)(b) in Manhattan, an officer spoke discourteously to § 87(2)(b)

Allegation (M) Abuse of Authority: On February 3, 2018, at § 87(2)(b) in Manhattan, an officer threatened § 87(2)(b) with the use of force.

In his CCRB statement, § 87(2)(b) stated that after Sgt. Becerra tasered him, another officer drew his taser (Board Review 01). § 87(2)(b) could not describe the officer who drew the taser. § 87(2)(b) later stated that this officer also said, “How does that Taser feel, mother fucker” while Sgt. Becerra was tasered him. While on the ground, § 87(2)(b) felt kicks throughout his body and felt an officer place their knee on the back of his head and neck, causing his forehead, face, and teeth to hit the ground. § 87(2)(b)'s breathing was restricted while in this position. § 87(2)(b) denied making any movements on the ground aside from lifting his neck and § 87(2)(b) denied kicking. § 87(2)(b) subsequently heard an officer say, “Yo man, don’t fucking move motherfucker. I’ll punch you.” The officers lifted § 87(2)(b) up and escorted him down Morton Street. An officer told § 87(2)(b) “Move mother fucker, move!” § 87(2)(b) could not describe any of the aforementioned officers.

In his phone statement, § 87(2)(b) did not allege that he heard officers using profanities and he did not provide any details of what occurred while § 87(2)(b) was on the ground (Board Review 12 and 13). As noted above, § 87(2)(b) stated that he saw Sgt. Becerra and another officer taser § 87(2)(b).

Sgt. Becerra, PO Benvenuto, PO Castiello, and PO Green denied making any of the above statements and did not hear an officer do so (Board Review 02-05). The four officers also stated that they did not see another officer with their taser drawn aside from Sgt. Becerra. Sgt. Becerra stated that only PO Green is taser certified, but he did not recall if PO Green had a taser during

the incident. PO Green, PO Castiello, and PO Benvenuto were not aware of any other officer who was equipped with a taser during the incident.

As previously mentioned, Sgt. Becerra did not kick § 87(2)(b) anywhere other than his lower leg and he did not see any other officers kick § 87(2)(b). Sgt. Becerra denied kneeling § 87(2)(b) and did not see anyone else do so.

PO Green denied seeing an officer kick or strike § 87(2)(b). PO Green did not see an officer place their knee against the back of § 87(2)(b)'s head, causing his head to hit the ground. PO Green did not believe an officer ever restricted § 87(2)(b)'s breathing because § 87(2)(b) was yelling and shouting.

In his CCRB statement, PO Benvenuto denied striking or kicking § 87(2)(b) and did not see an officer do so. PO Benvenuto denied holding § 87(2)(b) in a way that would have restricted his breathing. PO Benvenuto denied placing his foot, knee, or leg against § 87(2)(b)'s back or neck to keep him against the ground and denied knocking his head against the ground. PO Benvenuto did not see an officer push § 87(2)(b) to the ground.

PO Castiello denied kicking § 87(2)(b) and did not see any other officer do so. PO Castiello denied striking § 87(2)(b) with his feet. PO Castiello stated that § 87(2)(b) never appeared to have difficulties breathing and PO Castiello denied restricting § 87(2)(b)'s breathing. PO Castiello denied hitting the male in the back of the head, and denied that anyone else did so.

PO Grace and PO Janison arrived after § 87(2)(b) was placed in handcuffs. PO Grace and PO Janison denied seeing any officers use force against § 87(2)(b) and they did not hear an officer use profanities on the scene (Board Review 06 and 09).

§ 87(2)(g)
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§ 87(2)(g)

Allegation (K) Force: On February 3, 2018, at § 87(2)(b) in Manhattan, Sergeant John Becerra used physical force against § 87(2)(b)

As previously noted, § 87(2)(b) denied ever kicking his legs.

As noted above, in his initial CCRB statement, Sgt. Becerra stated that § 87(2)(b) kicked him while § 87(2)(b) was on the ground (Board Review 03). Sgt. Becerra did not remember whether § 87(2)(b)'s kicks made contact with him. In response, Sgt. Becerra kicked § 87(2)(b) two or three times from the knee down to stop § 87(2)(b) from kicking him. Sgt. Becerra stated that § 87(2)(b) was also trying to get up from the ground around this time. Sgt. Becerra said he kicked § 87(2)(b) to hold § 87(2)(b)'s feet down. Sgt. Becerra stated that he was taught to use this tactic in the academy in July 2003. Sgt. Becerra stated that his kicks were not effective; § 87(2)(b) continued to resist and kept trying to get up from the ground. Sgt. Becerra did not kick § 87(2)(b) anywhere other than his lower leg.

PO Benvenuto, PO Castiello, and PO Green denied seeing an officer kick § 87(2)(b) (Board Review 02, 05, and 11).

As noted above, Sgt. Becerra documented the use of a foot strike in his TRI report (Board Review 31).

NYPD Patrol Guide Procedure 221-01 states that force may be used when it is reasonable to ensure the safety of a member of the service or otherwise protect life, or when it is reasonable to place person in custody or prevent escape from custody (Board Review 43).

§ 87(2)(g)

Allegation (N)- Abuse of Authority: On February 3, 2018, at § 87(2)(b) Police Officer Brian Benvenuto used physical force against § 87(2)(b)

Allegation (O)- Abuse of Authority: On February 3, 2018, at § 87(2)(b) Police Officer Brian Benvenuto spoke discourteously to § 87(2)(b)

Allegation (P)- Abuse of Authority: On February 3, 2018, at § 87(2)(b) Police Officer Brian Benvenuto threatened to seize § 87(2)(b) s property.

PO Grace and PO Janison transported § 87(2)(b) to § 87(2)(b) from the scene of his arrest. PO Benvenuto and PO Castiello later relieved the officers at the hospital.

In his CCRB statement, § 87(2)(b) stated that while they were inside a room at the hospital, PO Benvenuto pushed him (Board Review 01). § 87(2)(b) was rear handcuffed and his legs were shackled at this point. PO Benvenuto pushed § 87(2)(b) on his chest with two hands and said, “Sit the fuck down motherfucker. The fuck’s wrong with you, eh?” § 87(2)(b) did not say anything and sat on the hospital bed. At some point, PO Benvenuto left the room and spoke with a doctor. When PO Benvenuto returned, PO Benvenuto said, “Oh, you’re playing a big guy now, eh? I can make you lose all your properties, I can make that shit lost in the system. Oh, you see that phone? You’re not gonna get it again.”

In their CCRB statement, PO Grace and PO Janison denied hearing an officer tell § 87(2)(b) “Sit the fuck down motherfucker (Board Review 06 and 09). The fuck’s wrong with you, eh” or, “I can make you lose all your properties. I can make that shit lost in the system.” They also denied seeing an officer push § 87(2)(b) at the hospital.

In his CCRB statement, PO Benvenuto stated that while at the hospital, § 87(2)(b) blew kisses at the officers, called them “pussies,” dared them to take off his handcuffs, made spitting sounds as if he was about to spit on the officers, and kept trying to walk out of his private room (Board Review 05). PO Benvenuto stated that officers and nurses repeatedly told § 87(2)(b) to stay in the room. PO Benvenuto denied pushing § 87(2)(b) in the hospital. PO Benvenuto denied saying, “Sit the fuck down motherfucker. The fuck is wrong with you?” PO Benvenuto denied cursing at § 87(2)(b) threatening to take any of his property or damage it.

In his CCRB statement, PO Castiello stated that § 87(2)(b) was “alright” when he was in the hospital (Board Review 02). PO Castiello stated that they told him to sit down several times and he eventually sat down without them making any physical contact. PO Castiello denied that there were any conversations about § 87(2)(b)’s property.

PO Green stated that he and Sgt. Becerra went to § 87(2)(b) at some point, but Sgt. Becerra stated that he went back to the command from the scene of incident and did not recall which officers were at the hospital (Board Review 03 and 04). While at the hospital, PO Green did not see an officer push or curse at § 87(2)(b).

§ 87(2)(g)
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§ 87(2)(g)

Allegation (Q) Abuse of Authority: On February 4, 2018, at the 6th Precinct stationhouse, Police Officer Brian Benvenuto spoke discourteously to § 87(2)(b)

In his CCRB statement, § 87(2)(b) stated that while he was in the holding cell, he asked officers if his cape made the officers scared, and asked why they used so much force (Board Review 01). In response, PO Benvenuto said, “Fuck out of here.”

In his CCRB statement, PO Benvenuto denied using profanities towards § 87(2)(b) and stated that he did not have any additional interactions with § 87(2)(b) after he saw him at the hospital (Board Review 05). PO Castiello and Sgt. Becerra denied hearing an officer say, “Fuck out of here,” at the stationhouse and PO Green denied hearing an officer use profanities (Board Review 02-04).

§ 87(2)(g)
§ 87(2)(g)
§ 87(2)(g)

Allegation (R) Abuse of Authority: On February 4, 2018, en route to the 6th Precinct stationhouse, Police Officer Nercy Burgos did not obtain medical treatment for § 87(2)(b)

Allegation (S) Abuse of Authority: On February 4, 2018, en route to the 6th Precinct stationhouse, Police Officer James Shouldis did not obtain medical treatment for § 87(2)(b)

Allegation (T) Abuse of Authority: On February 4, 2018, at the 6th Precinct stationhouse, officers did not obtain medical treatment for § 87(2)(b)

§ 87(2)(b) stated that while he was at central booking, a “captain” told the two officers who brought him there, identified via the investigation as PO Burgos and PO Shouldis, that he had to go back to the hospital and that they could not keep him at central booking (Board Review 01). PO Burgos and PO Shouldis subsequently took § 87(2)(b) back to the stationhouse. While en route to the stationhouse, § 87(2)(b) told PO Burgos and PO Shouldis that he was not feeling well and that they have to go back to the hospital. In response, PO Burgos and PO Shouldis told § 87(2)(b) that they would have to speak with the arresting officers to decide what to do. While at the stationhouse, approximately four officers told § 87(2)(b) that it would not be good for him if he went to the hospital. § 87(2)(b) described one of the officers as a black male in uniform, and the rest were either white or Hispanic males in uniform.

Sgt. Becerra, PO Green, and PO Castiello were not aware of § 87(2)(b) returning to the stationhouse after he was transported to Manhattan Central Booking (Board Review 02-04). PO Castiello did not have any further contact with § 87(2)(b) once he was brought to the holding cells. As previously noted, PO Benvenuto denied having any further interactions with § 87(2)(b) after seeing him at the hospital (Board Review 05).

In his CCRB statement, PO Green stated that when he returned to the stationhouse from the hospital, he worked on § 87(2)(b)'s arrest processing (Board Review 04). While he was at the stationhouse, § 87(2)(b) never requested to go to the hospital. At some point, § 87(2)(b) was transported to Manhattan Central Booking. PO Green finished processing § 87(2)(b)'s arrest and finished his tour. PO Green did not know if § 87(2)(b) was rejected at central booking and was made to return to the stationhouse.

Although PO Shouldis and PO Burgos did not have an independent recollection of this incident or recognize § 87(2)(b) they both noted in their memo books that they transported a male from central booking to the 6th Precinct stationhouse (Board Review 07, 08, 25 and 45).

The arraignment history in BADS noted that at and entry made by Sgt. Ricardo Morrison of the Court Section indicated that at 4:28 a.m., § 87(2)(b) was rejected by DOC because of a laceration on his forehead and there are no available cell in “specials” (Board Review 20).

The command log notes that § 87(2)(b) returned to the stationhouse from central booking, but it was not indicated why (Board Review 22).

§ 87(2)(g)

§ 87(2)(g)

Civilian and Officer CCRB Histories

- This is the first CCRB complaint to which § 87(2)(b) and § 87(2)(b) has been a party (Board Review 41 and 42).
- § 87(2)(b) has been a party of one CCRB complaint and has been named as a victim in one allegation (Board Review 40).
 - § 87(2)(b)
- Sgt. Becerra has been a member of service for 15 years and has been a subject in eight CCRB complaints and 20 allegations, none of which were substantiated. § 87(2)(g)
- PO Castiello has been a member of service for six years and has been a subject in four CCRB complaints and four allegations, none of which were substantiated. § 87(2)(g)
- PO Benvenuto has been a member of service for six years and has been a subject in six CCRB complaints and 10 allegations, one of which was substantiated.
 - Case number 201509217 involved a substantiated allegation of a stop. The Board recommended formalized training and the NYPD imposed formalized training.
- PO Burgos has been a member of service for eight years and has been a subject in two CCRB complaints and three allegations, of which two were substantiated.
 - Case number 201201700 involved substantiated allegations of a vehicle search and a frisk against PO Burgos. The Board recommended charges and the NYPD imposed a forfeiture of three vacation days.
 - § 87(2)(g)
- PO Shouldis has been a member of service for four years and this is the first CCRB complaint to which he has been a subject.

Mediation, Civil and Criminal Histories

- This complaint was not suitable for Mediation.
- § 87(2)(b) filed a Notice of Claim with the City of New York claiming mental and emotional anguish, mental and emotional injuries, physical harm and injuries, diminution of quality of life, loss of enjoyment of life's pleasures and pursuits, loss of standing in the

community, humiliation, fear, loss of earnings and earning capacity, and damage to several teeth requiring several dental procedures and seeking \$500,000 as redress (Board Review 16). A query was sent via email to determine whether a 50H Hearing was scheduled.

- § 87(2)(b) [Redacted]
- § 87(2)(b) [Redacted]
- § 87(2)(b) [Redacted]

Squad No.: _____

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| Investigator: | _____ | _____ | _____ |
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| Squad Leader: | _____ | _____ | _____ |
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| Reviewer: | _____ | _____ | _____ |
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